

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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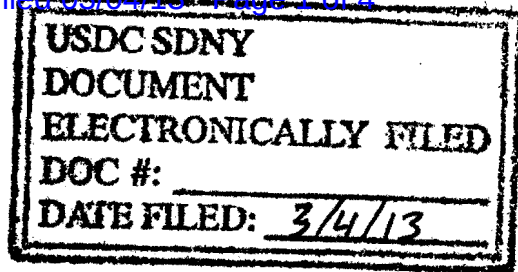
MICHAEL RAY JOHNSON JUNIOR, :

Plaintiff, :

-against- :

POLICE OFFICER MICHAEL, et al., :

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12 Civ. 4070 (JPO) (HBP)

REPORT AND
RECOMMENDATION

PITMAN, United States Magistrate Judge:

TO THE HONORABLE J. PAUL OETKEN, United States
District Judge,

The pro se plaintiff commenced this action on May 21, 2012 by filing a summons and complaint. According to the docket sheet, a service package was mailed to plaintiff at the address provided when he commenced this action on June 7, 2012. On June 21, 2012, another service was mailed to plaintiff at the Down-state Correctional Facility. My review of the file in November, 2012 disclosed that plaintiff was released from custody on November 24, 2012 and that no proof of service of the summons and complaint had ever been filed with respect to the two defendants who remained in the case after the Court's May 25, 2012 Order dismissing three of the defendants. Accordingly, I issued an Order to plaintiff on November 15, 2012 directing that plaintiff

show cause on or before January 15, 2013 why the action should not be dismissed for failure to serve the summons and complaint within the 120-day time limit established by Rule 4(m), Fed. R. Civ. P. Specifically, my November 15, 2012 Order provided:

Despite the fact that Rule 4(m), Fed. R. Civ. P., requires that the summons and complaint be served on all defendants no later than 120 days after the commencement of the action, according to the Court's records, the defendant has not yet been served. Accordingly, pursuant to Federal Rule of Civil Procedure 4(m), it is hereby

ORDERED that plaintiff has until January 15, 2013 either to complete service of the summons and complaint on the defendants or to show good cause why such service has not been made. Failure to complete service or to show cause on or before January 15, 2013, will result in the issuance of a Report and Recommendation recommending the dismissal of this action.

(Emphasis in original.)

A copy of my November 15, 2012 Order was mailed to plaintiff at his home address which he listed in his complaint. It has not been returned as undeliverable.

To date, plaintiff has not filed proof of service, has not explained why service has not been completed and has not contacted my chambers or the Court in any way. Accordingly, I respectfully recommend sua sponte that this action be dismissed

on the ground that plaintiff has not completed service of the summons and complaint within the time permitted by Rule 4(m), Fed. R. Civ. P.

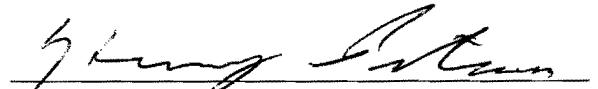
OBJECTIONS

Pursuant to 28 U.S.C. § 636(b)(1)(C) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have ten (10) days from the date of this Report and Recommendation to file written objections. See also Fed. R. Civ. P. 6(a) and 6(e). Such objections (and responses thereto) shall be filed with the Clerk of the Court, with courtesy copies delivered to the chambers of the Honorable J. Paul Oetken, United States District Judge, Room 2101, 40 Foley Square, New York, New York 10007 and to the chambers of the undersigned, Room 750, 500 Pearl Street, New York, New York 10007. Any requests for an extension of time for filing objections must be directed to Judge Oetken. FAILURE TO OBJECT WITHIN FOURTEEN (14) DAYS **WILL** RESULT IN A WAIVER OF OBJECTIONS AND **WILL** PRECLUDE APPELLATE REVIEW. Thomas v. Arn, 474 U.S. 140 (1985); United States v. Male Juvenile, 121 F.3d 34, 38 (2d Cir. 1997); I.U.E. AFL-CIO Pension Fund v. Hermann, 9 F.3d 1049, 1054 (2d Cir. 1993); Frank v. Johnson, 968 F.2d 298, 300 (2d Cir. 1992); Wesolek v. Canadair Ltd., 838 F.2d 55, 58 (2d

Cir. 1988); McCarthy v. Manson, 714 F.2d 234, 237-38 & n.2 (2d Cir. 1983).

Dated: New York, New York
March 4, 2013

Respectfully submitted,


HENRY PITMAN
United States Magistrate Judge

Copy transmitted to:

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